



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-172 (Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services.)**

Date last reviewed: **September 8, 1999**

Reviewer: **Mark Mullin**

Date current review completed: **April 17, 2003**

Briefly explain the subject matter of the document(s):

This rule provides information about the taxability of persons engaged in performing well drilling; the grading or clearing of land or the moving of earth (which does not include public road construction); the cleaning, fumigating, razing, or moving of existing buildings or structures; core drilling or testing of soil samples; leveling land for agricultural purposes; and janitorial services.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document



		Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Consideration should be given to incorporating information from the following WTDs:

- **Det. No. 01-196, 22 WTD 56 (2003) (whether cleaning activities on a “spec-built” home are subject to retail sales tax when performed by a cleaning service after all sub-contract construction work has been completed).**
- **Det. No. 01-047, 21 WTD 189 (2002) (whether the taxpayer’s activity of washing awnings constitutes a retail activity).**
- **Det. No. 00-067R, 20 WTD 356 (2001) (whether the pressure washing of sidewalks and walls or the removal of trash and other debris from a building’s roof is a janitorial service).**
- **Det. No. 99-174, 19 WTD 172 (2000) (whether the cleaning of tennis courts is a janitorial service).**
- **Det. No. 90-404, 10 WTD 356 (1990) (whether use tax is due on cleaning agents used by a person who cleans fire or water damaged real property).**
- **Det. No. 90-279, 10 WTD 75 (1990) (does cutting down and removing individual trees or grinding stumps on a landowner's property constitute "land clearing").**

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

This rule could be rewritten and reorganized in a more clear and concise manner. It may be more user-friendly to reorganize the rule by type of activity rather than by type of tax. Also, information contained in WAC 458-20-223 (Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee) should be incorporated into the rule.



Consideration should be given as to whether the information on land clearing/earth moving should be moved from this rule to WAC 458-20-170.

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs): **None.**

Court Decisions:

- *Pringle v. State*, 77 Wn.2d 569 (1970) (whether the cleaning of furnaces and chimneys is a janitorial service).
- *King Cy. v. Tax Comm'n*, 63 Wn.2d 393 (1963) (whether the clearing of logs and debris from the bed and banks of a river is "clearing land" within the meaning of RCW 82.04.050).

Board of Tax Appeals Decisions (BTAs):

- *Bovay Northwest, Inc. v. Dep't of Rev.*, BTA Docket No. 92-14 (1995) (whether the Department properly assessed sales tax on purchases of well drilling services).

Appeals Division Decisions (WTDs):

- Det. No. 01-196, 22 WTD 56 (2003) (whether cleaning activities on a “spec-built” home are subject to retail sales tax when performed by a cleaning service after all sub-contract construction work has been completed).
- Det. No. 01-047, 21 WTD 189 (2002) (whether the taxpayer’s activity of washing awnings constitutes a retail activity).
- Det. No. 00-067R, 20 WTD 356 (2001) (whether the pressure washing of sidewalks and walls or the removal of trash and other debris from a building’s roof is a janitorial service).
- Det. No. 00-038, 19 WTD 732 (2000) (whether property management company's employees who provided maintenance to buildings were performing janitorial services).
- Det. No. 99-174, 19 WTD 172 (2000) (whether the cleaning of tennis courts is a janitorial service).
- Det. No. 90-404, 10 WTD 356 (1990) (whether use tax is due on cleaning agents used by a person who cleans fire or water damaged real property).
- Det. No. 90-279, 10 WTD 75 (1990) (does cutting down and removing individual trees or grinding stumps on a landowner's property constitute "land clearing").

Attorney General Opinions (AGOs): **None.**



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **WAC 458-20-223 (Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.)**
- **Special Notice (The Tax Application for Tree and/or Stump Removal from Existing Orchards)**

5. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

I agree with the previous review that this rule should be amended to incorporate information now available in other documents identified in this and the previous review. Also, the meaning of "buildings and structures," "moving of earth," and "cleaning, fumigating, razing or moving" should be clarified.

Information contained in WAC 458-20-223 (Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee) should be incorporated into the rule.

Consideration should be given as to whether the information on land clearing/earth moving should be moved from this rule to WAC 458-20-170.

The previous review recommended that the rule should be amended to address the taxation of persons performing environmental remedial action. However, the special tax treatment for environmental remedial action is scheduled to expire July 1, 2003. Thus, the need to



provide information about environmental remedial action in this rule does not appear necessary unless the special tax treatment is extended by the Legislature.

6. Manager action: Date: 4/28/03

AL Reviewed and accepted recommendation

Amendment priority:

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 x 2
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